

## Message Text

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ORIGIN OPIC-06

INFO OCT-01 NEA-10 ISO-00 EB-07 L-03 AID-05 IGA-02 TRSE-00

OMB-01 SP-02 CIAE-00 INR-07 NSAE-00 /044 R

DRAFTED BY OPIC/ID/MEA:CHMIDDLETON:JMB

APPROVED BY EB/IFD/OIA:RJSMITH

OPIC/ID/DVP:HAZOLA

OPIC/GC:SFRANKLIN

EB/IFD/OIA:DHSTEBBING

NEA/ARN:DREUTHER

----- 037398

P 272139Z JUL 76

FM SECSTATE WASHDC

TO AMEMBASSY DAMASCUS PRIORITY

UNCLAS STATE 185853

FROM OPIC

E.O. 11652: N/A

TAGS: EINV

SUBJECT: SIDE LETTER FOR OPIC BILATERAL

REF: DAMASCUS 4440

1. THE ENCLOSED SIDE LETTER IS FORWARDED FOR EMBASSY TRANSMITTAL TO THE GOS FOR THE PURPOSE OF BEING RESPONSIVE TO THE REQUEST OF THE GOS FOR FURTHER EXPLANATION OF HOW THE OPIC PROGRAM IS MANAGED UNDER A BILATERAL AGREEMENT. IN PARTICULAR THE SIDE LETTER HELPS TO ASSURE THE GOS THAT OPIC'S INVESTMENT INSURANCE PROGRAM UNDERWRITES VARIOUS POLITICAL RISKS, BUT NOT, REPEAT NOT, COMMERCIAL RISKS. OPIC APPRECIATES EMBASSY'S OFFER TO TRANSLATE THE SIDE LETTER INTO ARABIC.

2. TEXT OF SIDE LETTER IS AS FOLLOWS:

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EXCELLENCY:

---I HAVE THE HONOR TO REFER TO THE AGREEMENT EFFECTED BY EXCHANGE OF NOTES OF THIS DATE RELATING TO INVESTMENT INSURANCE (INCLUDING REINSURANCE) AND GUARANTIES, WHICH ARE BACKED IN WHOLE OR PART BY THE CREDIT OR PUBLIC MONIES OF THE UNITED STATES OF AMERICA, COVERING PRIVATE INVESTMENTS BY UNITED STATES INVESTORS IN SYRIA, WHICH PROGRAM OF INVESTMENT INSURANCE AND GUARANTIES PRESENTLY IS ADMINISTERED BY THE OVERSEAS PRIVATE INVESTMENT CORPORATION ("OPIC"). IN THIS RESPECT, I ALSO HAVE THE HONOR OF DESCRIBING THE TYPES OF INSURANCE AND GUARANTIES COVERING INVESTMENTS IN SYRIA THAT PRESENTLY MAY BE ISSUED EITHER DIRECTLY BY OPIC OR BY OPIC AND OTHER ENTITIES OR GROUPS OF ENTITIES OPERATING IN CONJUNCTION WITH OPIC.

---UNDER THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, UNITED STATES INVESTORS, INCLUDING FOREIGN ENTITIES THAT ARE WHOLLY-OWNED BY UNITED STATES CITIZENS, ARE ELIGIBLE FOR EITHER INVESTMENT INSURANCE OR GUARANTIES ISSUED IN WHOLE OR PART BY OPIC. OPIC ALSO IS AUTHORIZED TO MAKE ARRANGEMENTS WITH FOREIGN GOVERNMENTS OR WITH MULTILATERAL ORGANIZATIONS AND INSTITUTIONS FOR THE SHARING OF LIABILITIES ASSUMED UNDER INVESTMENT INSURANCE, AND OPIC MAY, IN CONNECTION WITH SUCH RISK SHARING ARRANGEMENTS, ISSUE INSURANCE TO INVESTORS NOT OTHERWISE ELIGIBLE FOR INVESTMENT INSURANCE ISSUED BY OPIC.

---OPIC'S STATUTORY AUTHORITY TO ISSUE INVESTMENT INSURANCE AND REINSURANCE IS SET FORTH IN BROAD TERMS TO ASSURE FLEXIBILITY IN DEVELOPING TYPES OF INSURANCE COVERAGE AND IN OPIC'S OPERATIONS. OPIC'S BASIC COVERAGES ARE CLASSIFIED AS "INCONVERTIBILITY," "EXPROPRIATION," AND "WAR REVOLUTION AND INSURRECTION." IN ADDITION, BECAUSE OF THE DIVERSE FORMS OF FOREIGN INVESTMENTS, AND THE SPECIAL NEEDS OF CERTAIN INDUSTRIES OPERATING OVERSEAS, OPIC HAS DEVELOPED SPECIAL COVERAGES, SUCH AS THAT OFFERED FOR CONSTRUCTION AND SERVICE CONTRACTORS WITH FOREIGN GOVERNMENT ENTITIES, IN WHICH THE BASIC COVERAGES HAVE BEEN TAILORED TO THE NEEDS OF THE INDUSTRY.

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---AS PRESENTLY BEING ISSUED BY OPIC, INCONVERTIBILITY COVERAGE APPLIES WITH RESPECT TO AN APPROVED INVESTMENT WHEN THE INVESTOR IS UNABLE TO CONVERT INTO UNITED STATES DOLLARS THE LOCAL CURRENCY RECEIVED AS EARNINGS ON THE ORIGINAL INVESTMENT OR CAPITAL ELIGIBLE FOR REPATRIATION. INCONVERTIBILITY COVERAGE DOES NOT PROTECT AGAINST THE EFFECTS OF EXCHANGE FLUCTUATIONS, OR EXCHANGE REGULATIONS OR RESTRICTIONS THAT ARE APPLICABLE AT THE TIME THE INSUR-

ANCE IS ISSUED. EXPROPRIATION COVERAGE PROVIDES COMPENSATION WITH RESPECT TO AN APPROVED INVESTMENT WHEN SUBSEQUENT ACTION OF THE HOST COUNTRY GOVERNMENT RESULTS IN NATIONALIZATION, EXPROPRIATION OR CONFISCATION OF THE INVESTMENT OR EARNINGS ON THE INVESTMENT. BEFORE AN INVESTOR HAS THE RIGHT TO COMPENSATION WITH RESPECT TO ANY GIVEN ACT, HE MUST PURSUE ALL REASONABLE AND AVAILABLE REMEDIES HE MAY HAVE WITH RESPECT TO THE ALLEGED EXPROPRIATORY ACT. EXPROPRIATION COVERAGE DOES NOT COMPENSATE FOR LOSSES RESULTING FROM THE IMPACT OF VALID BUSINESS REGULATIONS THAT ARE NOT INTENDED FOR THE PURPOSE OF NATIONALIZATION OR APPLIED IN AN ARBITRARY MANNER. WAR, REVOLUTION AND INSURRECTION COVERAGE PROVIDES COMPENSATION FOR LOSSES RESULTING FROM WAR, REVOLUTION AND INSURRECTION. LOSSES RESULTING FROM LESSER CIVIL DISTURBANCES ARE NOT COVERED.

---UNDER ITS PRESENT STATUTORY AUTHORITIES, OPIC MAY ISSUE INVESTMENT GUARANTIES OF LOANS AND OTHER INVESTMENTS ASSURING AGAINST LOSS DUE TO ANY RISK. IN MOST CASES, THE INVESTMENT GUARANTY IS AN ALL RISK, "COMMERCIAL" GUARANTY COVERING A LOAN FROM AN INSTITUTIONAL LENDER IN THE UNITED STATES TO THE APPROVED PROJECT IN THE HOST COUNTRY. UNDER ITS PRESENT POLICIES, OPIC ALSO MAY GUARANTEE EQUITY INVESTMENTS IN APPROVED PROJECTS AGAINST REALIZED LOSSES SUCH AS COMMERCIAL FAILURE OF THE OPERATION.

---IN THE CASE BOTH OF INVESTMENT INSURANCE AND INVESTMENT GUARANTIES, THE TERMS OF INSURANCE OR GUARANTY AGREEMENTS UNDER WHICH THE INSURANCE OR GUARANTIES WOULD BE ISSUED TO THE INVESTOR WOULD NOT CREATE OBLIGATIONS FOR THE GOVERNMENT OF SYRIA. THUS WAR, REVOLUTION AND INSURRECTION COVERAGE WOULD NOT OBLIGATE THE GOVERNMENT OF SYRIA TO REIMBURSE THE INSURED INVESTOR FOR LOSSES RESULTING FROM UNCLASSIFIED

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WAR. LIKEWISE, THE MEASURE OF COMPENSATION UNDER EXPROPRIATION COVERAGE WOULD NOT BE DETERMINATIVE OF THE AMOUNT OF COMPENSATION TO BE PAID BY THE GOVERNMENT OF SYRIA FOR A NATIONALIZED INVESTMENT.

---I HOPE THE FOREGOING IS CONSISTENT WITH YOUR UNDERSTANDING OF THE INVESTMENT INSURANCE AND GUARANTY PROGRAMS OF THE UNITED STATES OF AMERICA THAT WOULD BE AVAILABLE WITH RESPECT TO INVESTMENTS IN SYRIA UNDER THE TERMS OF THE AGREEMENT BETWEEN OUR GOVERNMENTS PERTAINING TO THESE PROGRAMS.

---ACCEPT AGAIN, EXCELLENCY, THE RENEWED ASSURANCES OF MY HIGHEST CONSIDERATION. KISSINGER

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 27 JUL 1976  
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**Disposition Authority:** n/a  
**Disposition Case Number:** n/a  
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**Disposition Date:** 01 JAN 1960  
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**Disposition History:** n/a  
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**To:** DAMASCUS  
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